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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED  
APR 30 2003  
Michael N. Milby, Clerk

MARK NEWBY, *et al.*, Individually and  
On Behalf Of All Others Similarly  
Situating,

Plaintiffs

v.

ENRON CORP., *et al.*,

Defendants.

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CIVIL ACTION NO. H-01-3624  
(Consolidated)

**Defendant Stanley C. Horton's Motion for Reconsideration  
of the Court's Denial of his Motion to Dismiss**

Defendant, Stanley C. Horton, respectfully moves this Court to reconsider its March 24, 2003, Order denying his Motion to Dismiss and, in support, shows the following:

**I. Introduction**

Mr. Horton remains a defendant in this case solely because of his seat on the Management Committee. Lead Plaintiff has not, nor can he, allege facts sufficient to state a claim against Mr. Horton. Mr. Horton's role at Enron involved the operation of a traditional pipeline subsidiary company. The Complaint contains no allegations regarding the business that Mr. Horton operated, nor does it allege a single statement, much less a misrepresentation, made by Mr. Horton. Further, there are no allegations that Mr. Horton was involved in the preparation of Enron's financial reports or that he has any background in accounting. Based upon this Court's prior Orders, and the complete absence of any specific allegation against Mr. Horton, this Court can only conclude that Lead Plaintiff has not stated a claim against Mr. Horton under Section 10(b), 20(a) or 20A of the Securities and Exchange Act of 1934.

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## **II. Allegations of Management Committee Membership, without more, are insufficient to State a Claim.**

The Court correctly held that “a person’s position in the corporation’s hierarchy or membership on a committee, or his receipt of substantial compensation, by itself, is insufficient to meet the pleading requirements.” (April 21, 2003 Order #1345, page 6). The Court reaffirmed this finding in its most recent Memorandum and Order which sets out a detailed analysis of Lead Plaintiff’s allegations as related to the totality of the circumstances and allegations surrounding each of the remaining Enron insider defendants. (April 23, 2003 Memorandum and Order Re Remaining Enron Insider Defendants #1347). The Court considered membership on the Management Committee, but correctly found that without added knowledge from day-to-day, personal participation in the business operations of Enron, and without any allegations of a background in accounting, Lead Plaintiff failed to state a cause of action. (April 23, 2003 Order #1347, at 36). Likewise, the Court found that three years’ service on the Management Committee,<sup>1</sup> did not automatically give rise to a cause of action where there were no specific allegations of attendance and where the defendant had not participated in the preparation of any of Enron’s financial statements or accounting decisions. (April 23, 2003 Order #1347, at 17-19). The Court’s conclusion - that mere membership on the Management Committee, without added allegations that meet PSLRA specificity requirements, is insufficient to state a claim - is equally applicable to Defendant Horton.

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<sup>1</sup>The Court indicates that Mr. Hirko was on the Management Committee in 1997 and 1998 and on the Executive Committee in 1999. However, like Mr. Derrick and Mr. Horton, Mr. Hirko was on a committee whose name changed through the years. In 1997 and 1998 it was known as “The Management Committee,” in 1999 it was called, “The Executive Committee,” and in 2000 “The Enron Corporate (Management) Committee.” The Court has recognized the confusion created by these changing titles. (April 21, 2003 Order #1345, at 2).

- a. **There are no allegations of fraud or wrongdoing against any of the companies that Mr. Horton operated nor are there allegations connecting Mr. Horton to any of Enron's allegedly suspect businesses.**

During the Class period, Mr. Horton was Chairman and CEO of Enron Transportation Services, which included Enron's regulated pipeline businesses.<sup>2</sup> Thus, Mr. Horton operated the "stodgy regulated natural gas company," a vestige of Enron's humble beginnings, as described in Plaintiff's Complaint (Complaint, ¶5).<sup>3</sup> The Complaint contains no allegation of wrongdoing whatsoever against any company operated by Mr. Horton.

By contrast, Lead Plaintiff alleges that Mr. Hirko was Chief Executive Officer of EBS, a company at the very heart of Enron's alleged schemes to defraud. Hirko reportedly left EBS and Enron in June 2000. (April 23, 2003 Order #1347, at 18). However, he remains connected to the alleged fraud in Enron's broadband business via Plaintiff's allegations. For instance, Lead Plaintiff alleges that "[d]iscussions with Blockbuster first got off the ground over two days in 3/00. Even though at that point EBS personnel had no way to deliver the VOD product, and no technical knowledge of what they were to deliver, within 48 hours the EBS team had agreed to a 20-year exclusive deal for VOD. EBS employees knowledgeable about the technical challenges knew from the day the deal was announced that the fledgling EIN could not then – and probably never would

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<sup>2</sup> Enron's regulated pipeline business during the class period included, Northern Natural Gas Company, a wholly-owned subsidiary of Enron Corporation; Transwestern Pipeline Company, a wholly-owned subsidiary of Enron Corporation; Citrus Corporation, jointly-owned by Enron Corporation and El Paso Corp. (Citrus Corp. owns 100% of the stock of Florida Gas Transmission Company); Northern Plains Natural Company, the General Partner and operator of Northern Border Partners (NYSE : NBP); and, Enron's one-third ownership interest in Trailblazer Pipeline Company.

<sup>3</sup> The Court noted in a previous opinion that unlike other top insiders who were terminated, Horton is still working for Enron and that none of the fraud alleged by Lead Plaintiff occurred in his business unit. (March 24, 2003 Order #1299, at 2-3).

be able to – deliver VOD as represented by Enron.” (Complaint ¶ 300 (o)). Despite the presence of these allegations, the Court considered the totality of Mr. Hirko’s role at Enron and found that, with regard to the broadband business and EBS, Lead Plaintiff did not specifically allege that Mr. Hirko made any false or misleading statements, ultimately concluding that Lead Plaintiff failed to state a claim against Mr. Hirko. (April 23, 2003 Order #1347, at 17-19).

By contrast, there is not a single allegation connecting Mr. Horton to the broadband business, EBS or any other Enron business against which allegations of wrongdoing exist. The pipeline companies that Mr. Horton operated are simply not implicated in this lawsuit. Moreover, there are no allegations in the Complaint that Mr. Horton ever made any false or misleading statements.

The Court’s Order granting Mr. Hirko’s Motion to Dismiss also suggests that specific allegations regarding attendance at Management Committee meetings is a prerequisite to stating a claim under the Exchange Act. (April 23, 2003 Order #1347, at 17-18). No such allegations were made with regard to Mr. Horton. Further, the Court also considered it significant that there are no allegations that Mr. Hirko participated in the preparation of any of Enron’s financial statements or accounting decisions. (April 23, 2003 Order #1347, at 18). Likewise, there are no allegations that Mr. Horton participated in the preparation of any of Enron’s financial statements or accounting decisions. Nor are there allegations that Mr. Horton had any background in accounting. Therefore, based upon this Court’s ruling as to Mr. Hirko, logic and consistency dictate that Lead Plaintiff has also failed to state a claim against Mr. Horton.

- b. There are no allegations about Horton’s knowledge or role at Enron to create even an inference of scienter nor are there any allegations that Mr. Horton ever made any false, deceptive or misleading statements**

The Court considered unspecific allegations of fraud against Mr. Derrick and correctly found

that the Complaint did not “provide any specific facts about Derrick’s knowledge or role at, nor any facts that would create a strong inference of scienter for him with respect to his involvement in, the New Power transaction.” (April 23, 2003 Order #1347, at 33). With regard to general allegations concerning Mr. Derrick’s failure to disclose, the Court, correctly found that “[n]o specifics are provided about each’s role, or how, when, where, why and what was not disclosed. Clearly such pleading will not satisfy the PSLRA.” (April 23, 2003 Order #1347, at 36). Mr. Derrick’s service on the Management Committee could not bolster or remedy the clearly insufficient pleadings against Mr. Derrick. The pleadings against Mr. Horton are equally deficient. There are no allegations against Mr. Horton regarding what he knew, or about any failure to disclose information, much less any specific allegation stating the “how, when, where, why and what.” In fact, Mr. Horton is not alleged to be connected with proxies, disclosures, memos, alleged conspiracy, cover ups or any fraudulent schemes alleged against Enron.

### **III. Mr. Horton’s duties centered on operations of a subsidiary.**

The Court also correctly recognized that this case must be dismissed against one “whose duties centered on operations of a subsidiary or an affiliate.” (March 24, 2003 Order #1299, at 6). Mr. Horton’s duties did center on operations of a subsidiary and the Complaint supports only this conclusion. As stated above, Mr. Horton was Chairman and CEO of Enron Transportation Services, which included the above-listed regulated pipeline businesses. (Complaint ¶83(g)). There is simply no connection in the Complaint, or otherwise, that Enron Transportation Services, any of the pipeline businesses, or Mr. Horton, individually, were involved in the questioned SPE’s or partnerships, or connected with any of Enron’s alleged misrepresentations or fraudulent accounting. (See generally, Defendant Stanley C. Horton’s Motion to Dismiss # 638).

***Rebecca Mark-Jusbasche***

This Court granted Rebecca Mark-Jusbasche's Motion to Dismiss because her "duties centered on operations of a subsidiary or affiliate," despite extensive allegations contained in the Complaint connecting Ms. Mark-Jusbasche to fraud and wrongdoing. (March 24, 2003 Order, #1299, at 6). Ms. Mark-Jusbasche served on the Enron Board of Directors for just over one year from July 1999 to August 2000. (March 24, 2003, Order #1300, at 3). The Complaint also reflects that she served on the Management Committee in 1997, 1998, and 1999.<sup>4</sup> (Complaint ¶88). Ms. Mark-Jusbasche was a top executive during the Class Period, as Chairman and CEO of Enron International. (Complaint at ¶83(n)). She served as an officer and/or director of Azurix - a company Plaintiff alleges was engaged in wrongdoing. (Complaint at ¶85 (gg)). Lead Plaintiff described a bitter power struggle between Skilling and Mark-Jusbasche to succeed Kenneth Lay as Enron's CEO. The Complaint further states that she got the new position "to fulfill her ambition to be CEO of a public company" and "to silence her" because she "*possessed extraordinarily dangerous and damaging information about the wrongdoing that had gone on at Enron.*" (Complaint ¶121(h), emphasis added; March 24, 2003 Order #1300, at 6). The Court found that the Complaint failed to specify when and how she obtained the "extraordinarily dangerous and damaging information." (March 24, 2003 Order #1300, at 6). The Complaint also sets out two allegedly false and misleading statements by Ms. Mark-Jusbasche. (Complaint, ¶114). However, the Court found that the first statement was too general to be false or misleading and the second was "mere corporate puffery." (March 24, 2003 Order #1300, at 6-7).

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<sup>4</sup> In 1999, the Management Committee's name changed to the "Executive Committee."

Further, Ms. Mark-Jusbasche was among those Enron insiders who signed the Form S-3 filed with the SEC to register 10 million 7% exchangeable notes, which contained Enron's 1999 second-quarter financial results and incorporated Enron's Form 10-K for 1998. (March 24, 2003 Order #1300, at 4). Lead Plaintiff alleges that these financial results were false. (Complaint ¶164). She additionally signed Enron's 1999 Report on Form 10-K filed with the SEC, which contained Enron's 1998 and 1999 annual financial statements, which Arthur Anderson had certified with a "clean" opinion. (Complaint ¶221).

There is simply no means of comparison between the allegations against Mark-Jusbasche and Mr. Horton. To summarize, Mr. Horton ran the regulated pipeline businesses against which no allegations of wrongdoing exist. There are no allegations that Mr. Horton attended any meetings or was aware of any alleged wrongdoings in other Enron divisions. He was not a member of Enron's Board of Directors. He did not participate in the preparation of any of Enron's financial statements or accounting decisions. There are no allegations that he has a background in accounting; in fact, Mr. Horton has a thirty-year background in the pipeline business. There are no allegations that he signed any forms filed with the SEC. There are no allegations that Mr. Horton ever made any false, deceptive or misleading statements. After examining the totality of Mr. Horton's role at Enron as well as all the allegations in the Complaint in light of the Court's prior rulings in this case, the only possible conclusion is that Lead Plaintiff has failed to state a claim against Mr. Horton.

For the foregoing reasons, Defendant Stanley C. Horton, respectfully requests that this Court grant his motion to reconsider the Court's March 24, 2003 Order, and that upon reconsideration, the Court grant Mr. Horton's motion to dismiss.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on all counsel of record on the Service List on April 29, 2003, via posting to [www.esl3624.com](http://www.esl3624.com) in compliance with the Court's Order Regarding Service of Papers and Notice of Hearings Via Independent Website



Maryellen S. Hester